

(3) In the case of the individual emission products of non-baseline or atypical fuels and additives (pursuant to § 79.56(e)(2)), the literature data need not be submitted for those emission products which are the same as the combustion emission products of the respective base fuel for the product's fuel family (pursuant to § 79.55). For this purpose, data on the base fuel emission products for the product's fuel family:

(i) May be found in the literature of previously-conducted, adequate emission speciation studies for the base fuel, or for a fuel or additive/fuel mixture capable of grouping with the base fuel (see, for example, the references in paragraph (b)(5) of this section).

(ii) May be compiled while gathering internal control data during emissions characterization studies on the manufacturer's non-baseline or atypical product; or

(iii) May be obtained from various manufacturers in the course of their testing different additive(s) belonging to the same fuel family, or in the testing of a base fuel serving as representative of the baseline group for the respective fuel family.

(e) *Data bases.* The literature search must include the results of searching appropriate commercially available chemical, toxicologic, and environmental databases. The databases shall be searched using, at a minimum, CAS numbers (when applicable), chemical names, and common synonyms.

(f) *Search period.* The literature search shall cover a time period beginning at least thirty years prior to the date of submission of the reports specified in §§ 79.59(b) through (c) and ending no earlier than six months prior to the date on which testing is commenced or reports are submitted in compliance with this subpart.

(g) *References.* Information on base fuel emission inventories may be found in references in paragraphs (b)(5)(i) through (xi) of this section, as well as in the following:

(1) Auto/Oil Air Quality Improvement Research Program, Technical Bulletin #1, December 1990.

(2) Keith *et al.*, ACS Committee on Environmental Improvement, "Principles of Environmental Analysis," The

Journal of Analytical Chemistry, Volume 55, pp. 2210-2218, 1983.

(3) "The Composition of Gasoline Engine Hydrocarbon Emissions—An Evaluation of Catalyst and Fuel Effects"—SAE 902074 and "Speciated Hydrocarbon Emissions from Aromatic, Olefin, and Paraffinic Model Fuels"—SAE 930373.

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#### § 79.53 Tier 2.

(a) *Generally.* Subject to the provisions of § 79.53(b) through (d), the combustion emissions of each fuel or fuel additive subject to testing under this subpart must be tested in accordance with each of the testing guidelines in §§ 79.60 through 79.68, except that fuels and additives in the methane and propane fuel families (pursuant to § 79.56(e)(1)(v) and (vi)) need not undergo the Salmonella mutagenicity assay in § 79.68). Similarly, subject to the provisions of § 79.53(b) through (d), the evaporative emissions of each designated evaporative fuel and each designated evaporative fuel additive subject to testing under this subpart must be tested according to each of the testing guidelines in §§ 79.60 through 79.67 (excluding § 79.68, *Salmonella typhimurium* Reverse Mutation Assay).

(b) *Manufacturer Determination.* Manufacturers shall determine whether the information gathered pursuant to the literature search in § 79.52(d) contains the results of adequately performed and adequately documented previous testing which provides information reasonably comparable to that supplied by the health tests described in §§ 79.62 through 79.68 regarding the carcinogenicity, mutagenicity, neurotoxicity, teratogenicity, reproductive/fertility measures, and general toxicity effects of the emissions of the fuel or additive. When manufacturers make an affirmative determination, they need submit only the information gathered pursuant to § 79.52(d) for such tests. EPA maintains final authority in judging whether the information is an adequate substitution in lieu of conducting the associated tests. EPA's determination of the adequacy of existing information shall be guided by the considerations

described in paragraph (d) of this section. If EPA finds that the manufacturer has relied upon inadequate test data, then the manufacturer will not be considered to be in compliance until the corresponding tests have been conducted and the results submitted to EPA.

(c) *Testing.* (1) All testing required pursuant to this section must be done in accordance with the procedures, equipment, and facility requirements described in §§ 79.57, 79.60, and 79.61 regarding emissions generation, good laboratory practices, and inhalation exposure testing, respectively, as well as any other requirements described in this subpart. The laboratory conducting the animal studies shall be registered and in good standing with the United States Department of Agriculture and regularly inspected by United States Department of Agriculture veterinarians. In addition, the facility must be accredited by a generally recognized independent organization which sets laboratory animal care standards. Use of inadequate test protocols or substandard laboratory techniques in performing any testing required by this subpart may result in cancellation of all affected registrations.

(2) Carcinogenic or mutagenic effects in animals from emissions exposures shall be determined pursuant to § 79.64 *In vivo* Micronucleus Assay, § 79.65 *In vivo* Sister Chromatid Exchange Assay, and § 79.68 *Salmonella typhimurium* Reverse Mutation Assay. Teratogenic effects and reproductive toxicity shall be examined pursuant to § 79.63 Fertility Assessment/Teratology. General toxicity and pulmonary effects shall be determined pursuant to § 79.62 Subchronic Toxicity Study with Specific Health Effect Assessments. Neurotoxic effects shall be determined pursuant to § 79.66 Neuropathology Assessment and § 79.67 Glial Fibrillary Acidic Protein Assay.

(d) *EPA Determination.* (1) After submission of all information and testing, EPA in its judgment shall determine whether previously conducted tests relied upon in the registration submission are adequately performed and documented and provide information reasonably comparable to that which would be provided by the tests de-

scribed herein. Manufacturers' submissions shall be sufficiently detailed to allow EPA to judge the adequacy of protocols, techniques, experimental design, statistical analyses, and conclusions. Studies shall be performed using generally accepted scientific principles, good laboratory techniques, and the testing guidelines specified in these regulations.

(2) EPA shall give appropriate weight when making this determination to the following factors:

- (i) The age of the data;
- (ii) The adequacy of documentation of procedures, findings, and conclusions;
- (iii) The extent to which the testing conforms to generally accepted scientific principles and practices;
- (iv) The type and number of test subjects;
- (v) The number and adequacy of exposure concentrations, *i.e.*, emission dilutions;
- (vi) The degree to which the tested emissions were generated by procedures and under conditions reasonably comparable to those set forth in § 79.57; and
- (vii) The degree to which the test procedures conform to the testing guidelines set forth in §§ 79.60 through 79.68 and/or furnish information comparable to that provided by such testing.

(3) The test animals shall be rodents, preferably a strain of rat, and testing shall include all of the endpoints covered in §§ 79.62 through 79.68. All studies shall be properly executed, with appropriate documentation, and in accord with the individual health testing guidelines (§§ 79.60 through 79.68) of this part, *e.g.*, 90-day, 6-hour per day exposure, minimum.

(4) In general, the data in a manufacturer's registration submittal shall be adequate if the duration of a test's exposure period is at least as long, in days and hours, as the inhalation exposure specified in the related health test guideline(s). Data from tests with shorter exposure durations than those specified in the guidelines may be acceptable if the test results are positive (*i.e.*, exhibit adverse effects) and/or include a demonstrable concentration-response relationship.

(5) Data in support of a manufacturer's registration submittal shall directly address the effects of inhalation exposure to the whole evaporative and exhaust emissions of the respective fuel or additive or to the whole evaporative and exhaust emissions of other fuels or additives which satisfy the criteria in § 79.56 for classification into the same group as the subject fuel or fuel additive. Data obtained in the testing of a raw liquid fuel or additive/base fuel mixture or a raw, aerosolized fuel or additive/base fuel mixture shall not be adequate to support a manufacturer's registration submittal. Data from testing of evaporative emissions cannot substitute for test data on combustion emissions. Data from testing of combustion emissions cannot substitute for test data on evaporative emissions.

#### § 79.54 Tier 3.

(a) *General Criteria for Requiring Tier 3 Testing.* (1) Tier 3 testing shall be required of a manufacturer or group of manufacturers at EPA's discretion when remaining uncertainties as to the significance of observed health effects, welfare effects, and/or emissions exposures from a fuel or fuel/additive mixture interfere with EPA's ability to make reasonable estimates of the potential risks posed by emissions from the fuel or additive products. Tier 3 testing may be conducted either on an individual basis or a group basis. If performed on a group basis, EPA may require either the same representative to be used in Tier 3 testing as was used in Tier 2 testing or may select a different member or members of the group to represent the group in the Tier 3 tests.

(2) In addition to the criteria specific to particular tests as summarized and detailed in the testing guidelines (§§ 79.62 through 79.68), EPA may consider a number of factors (including, but not limited to):

- (i) The number of positive and negative outcomes related to each endpoint;
- (ii) The identification of concentration-effect relationships;
- (iii) The statistical sensitivity and significance of such studies;
- (iv) The severity of the observed effects (e.g., whether the effects would be

likely to lead to incapacitating or irreversible conditions);

(v) The type and number of species included in the reported tests;

(vi) The consistency and clarity of apparent mechanisms, target organs, and outcomes;

(vii) The presence or absence of effective health test control data for base-fuel-only versus additive/base fuel mixture comparisons;

(viii) The nature and amount of known toxic agents in the emissions stream; and

(ix) The observation of lesions which specifically implicate inhalation as an important exposure route.

(3) *Consideration of exposure.* EPA retains discretion to consider, in addition to available toxicity data, any Tier 1 data on potential exposures to emissions from a particular fuel or fuel additive (or group of fuels and/or fuel additives) in determining whether to require Tier 3 testing. EPA may consider, but is not limited to, the following factors:

(i) Types and emission rates of specified emission components;

(ii) Types and emission rates of combinations of compounds or elements of concern;

(iii) Historical and/or projected production volumes and market distributions; and

(iv) Estimated population and/or environmental exposures obtained through extrapolation, modeling, or literature search findings on ambient, occupational, or epidemiological exposures.

(b) *Notice.* (1) EPA will determine whether Tier 3 testing is necessary upon receipt of a manufacturer's (or group's) submittal as prescribed under § 79.51(d). If EPA determines on the basis of the Tier 1 and 2 data submission and any other available information that further testing is necessary, EPA will require the responsible manufacturer(s) to conduct testing as described elsewhere in this section. EPA will notify the manufacturer (or group) by certified letter of the purpose and nature of any proposed testing and of the proposed deadline for completing the testing. A copy of the letter will be placed in the public record. EPA will provide the manufacturer a 60-day